

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Wireless Telecommunications Bureau Reminds)	
Paging and Radiotelephone Service Licensees of)	WT Docket No. 14-180
Certain Technical Rules and Seeks Comment on)	
The Need for Technical Flexibility)	

COMMENTS

The BloostonLaw Licensees listed in Attachment A hereto hereby submit comments in connection with the Commission's inquiry into regulatory changes that are necessary to foster additional technical and operational flexibility in the future.¹ The BloostonLaw Licensees believe that by providing a flexible regulatory environment, licensees will be able to make better use of this under-utilized spectrum for a variety of purposes, including control and two-way dispatch.

In order to make the Part 22 Paging and Radiotelephone Service spectrum available for its best and highest use, the BloostonLaw Licensees believe that the Commission should take the following actions:

- a. Amend Section 20.9 to eliminate the requirement that the Paging and Radiotelephone Service be classified as Commercial Mobile Radio Service ("CMRS");
- b. Confirm that licensees may utilize trunked operations on VHF and UHF frequencies to provide communications services to the public and/or to meet private internal communications needs;
- c. Clarify that equipment that has been certified as compliant for use under Part 90 of the Commission's Rules may also be used for private internal communications on Part 22 spectrum;
- d. Allow alternative engineering showings in lieu of interference formulas as contained in Rule Sections 22.537 and 22.567; and

¹ Wireless Telecommunications Bureau Reminds Paging and Radiotelephone Service Licensees of Certain Technical Rules and Seeks Comment on the Need for Technical Flexibility, *Public Notice*, WT Docket No. 14-180, 29 FCC Rcd 12673 (WTB, rel. Oct. 17 2014).

- e. Amend Rule Section 22.503 in order to eliminate the requirement for licensees using Part 22 spectrum for private internal communications to meet a population coverage requirement.

The Commission Should Eliminate the Rule Section 20.9(a)(6) Requirement that Part 22 Paging Spectrum be Regulated as Commercial Mobile Radio Services ("CMRS")

The Commission should eliminate current Rule Section 20.9(a)(6) as unnecessary and inconsistent with its latest amendment to Rule Section 22.7, which eliminated the common carrier requirement for licensees under Part 22 off the FCC's Rules.² At the time the Commission adopted Rule Section 20.9(a)(6), eligibility in the Public Mobile Services – including the Paging and Radiotelephone Service – was limited to common carriers by former Rule Section 22.7. This restriction was adopted at a time when licenses in the Public Land Mobile Radio Service (predecessor to the Paging and Radiotelephone Service) were issued solely for the provision of paging and two-way mobile telephone services on a common carrier basis.³ Since that time, the FCC has amended Part 22 of its rules to permit the provision of other services, including cellular radiotelephone and dispatch services. Additionally, in more recent years, other wireless services have emerged, including Conventional Industrial/Business Pool Commercial Service, 800 MHz Specialized Mobile Radio Service (SMR), Narrowband Personal Communications Service, Broadband Personal Communications Service, and the commercial 700 MHz Services – all of which enable their subscribers to receive text messaging services as an alternative to traditional paging services. Thus, the Part 22 Paging and Radiotelephone Service is by no means the sole source of spectrum for providing paging or text messaging services to the public. Moreover, as cellular and other advanced wireless services have proliferated, the need for paging and common carrier radiotelephone service has exponentially

² See 70 FR 19307, Apr. 13, 2005

³ The FCC can take official notice that the Part 22 services were originally regulated in the Common Carrier Bureau.

diminished. As a result, the Commission has acknowledged the need to expand the possible uses for the Part 22 Paging and Radiotelephone Service spectrum. As a result, in 2005, the FCC amended Rule Section 22.7 to eliminate the common carrier eligibility restriction for the Part 22 Public Mobile Services.⁴

As early as 2002, the FCC recognized in its Seventh Annual CMRS Competition Report, that “competition within the mobile data sector is developing successfully, as evidenced by the multitude of dynamic services, service packages, and pricing plans that are available to customers from a variety of providers.”⁵ In the paging/mobile data subsector, the FCC estimated that 18 million paging units were in service as of mid-2001, and that there were hundreds of paging carriers competing for business.⁶ Since that time, the number of paging carriers has dropped precipitously due to competitive pressures in the telecommunications industry, due primarily to customer demands for multiple wireless services provided from a single device that paging carriers are simply not able to provide. Because of this precipitous drop in paging customers, the Commission, in 2014, proposed to eliminate the regulatory fee for paging carriers recognizing that the number of paging subscribers has significantly diminished and therefore accounts for a small amount of regulatory fees.⁷

The FCC’s recent actions demonstrate that the restrictions in Rule Sections 20.9 are unnecessary. These actions have been in furtherance of the Commission’s goal of allocating

⁴ In re Biennial Regulatory Review – Amendment of Parts 1, 22 and 90 of the Commission’s Rules, *Report and Order and Notice of Proposed Rulemaking*, (WT Docket No. 03-103) paras. 99-103 (rel. February 22, 2005).

⁵ In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services, Seventh Report*, 17 FCC Rcd 12895, 13039 (2002).

⁶ *Id.* at 13049-50.

⁷ Assessment and Collection of Regulatory Fees for Fiscal Year 2014, *Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order*, MD Docket Nos. 14-92, 13-140 and 12-201, 29 FCC Rcd 6417, ¶32 (2014).

spectrum in accordance with its highest and best use.⁸ The Commission has, over the years, modified its rules to provide greater flexibility in communications service offerings in the paging bands. For example, in the Flexible Frequency Allocation Order (1989),⁹ the Commission determined that it is “preferable to permit the market place to determine which common carrier services will be offered on the conventional two-way mobile frequencies, rather than to specify permitted uses over these channels, which specifications may unnecessarily restrict the introduction of new kinds of common carrier services.”¹⁰ As a result, the Commission amended Part 22 of its rules to “permit licensees of two-way common carrier channels to offer any type of mobile two-way or one-way common carrier services, to use their channel capacity for common carrier control or any other common carrier point-to-point function, and to resell their channel capacity for mobile common carrier uses.”¹¹

In 1995, the FCC modified its rules to permit Part 22 licensees to utilize their facilities to provide dispatch services, so long as interconnected commercial service also remained available.¹² And, in 1997, the FCC concluded in its order adopting competitive bidding rules for the paging services that Private Mobile Radio Service (“PMRS”) licensees would be eligible to bid on exclusive use paging licenses at auction.¹³ In particular, the Commission stated “[t]o the extent that a PMRS provider may use or wish to obtain an exclusive channel for which we are establishing geographic licensing and competitive bidding, the geographic licensing and

⁸ Federal Communications Commission, *Strategic Plan FY2003 –FY2008* at 5 (2002).

⁹ In re Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services, *First Report and Order*, 4 FCC Rcd. 1576 (1989).

¹⁰ *Id.* at para. 33.

¹¹ *Id.*

¹² In re Eligibility for Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, *Report and Order*, FCC 95-98, 18 para. 29 n. 96 (1995) *affirmed*, *Memorandum Opinion and Order*, FCC 97-213, para. 12 (1997).

¹³ Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems; and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997).

competitive bidding rules adopted herein will apply.”¹⁴ The Commission thus clearly intended to make PMRS licensees eligible to apply for and use Part 22 exclusive paging spectrum on a non-common carrier and/or private, internal use basis, without regard to the then extant language of Section 22.7 of the Commission’s Rules. Likewise, where spectrum is used on a private carrier and/or private internal use basis, regulation as non-CMRS would be appropriate.

In recognition that the common carriage eligibility restriction of Rule Section 22.7 had outlived its usefulness, the FCC determined that elimination of this restriction in Rule Section 22.7 would be in the public interest and, more importantly, amended Rule Section 22.7 by replacing any references to the term “common carrier” with the term “licensee.”¹⁵ In taking this action, the FCC concluded that the common carrier eligibility restriction is inconsistent with the open eligibility for other wireless services intended by the Commission and, as a result, conflicts with the Commission’s regulatory parity policy and is at odds with the Congressional mandate that spectrum be put to its “highest and best use.” Accordingly, the Commission should now eliminate subsection (a)(6) from Rule Section 20.9 in order to conform Rule Section 20.9 to Rule Section 22.7 as amended in WT Docket No. 03-103.

The FCC Should Confirm that Part 22 Licensees are Permitted to Trunk Frequencies for More Efficient Use of the Two-Way Frequencies Allocated to the Paging and Radiotelephone Service.

The Commission has allocated VHF and UHF spectrum for use on a one-way and two-way basis. Since the advent of the Improved Mobile Telephone Service (“IMTS”) in the mid-1960s, IMTS had significant advantages over Mobile Telephone Service (“MTS”) because it greatly increased spectrum efficiencies by utilizing automatic trunking and reducing channel

¹⁴ *Id.* at para. 3, n. 7.

¹⁵ In re Biennial Regulatory Review – Amendment of Parts 1, 22 and 90 of the Commission’s Rules, *Report and Order and Notice of Proposed Rulemaking*, (WT Docket No. 03-103) paras. 99-103 (rel. February 22, 2005).

bandwidth.¹⁶ While the FCC's Rules did not explicitly address the use of trunked systems in the former Part 22 Public Land Mobile Service (and now the Part 22 Paging and Radiotelephone Service), the FCC can take official notice that it authorized, without rule waiver, the construction and operation of numerous IMTS systems throughout the United States on the VHF and UHF two-way frequencies.

For many years, Part 90 private radio licensees have known that trunked multi-channel systems are more efficient and profitable to operate than multi-channel conventional systems because trunked systems can accommodate many more mobile/subscriber units. These same considerations apply to the provision of dispatch services that utilize Part 22 spectrum.

The BloostonLaw Licensees agree that permitting trunked operations on the Part 22 Paging and Radiotelephone Service frequencies is consistent with the regulatory flexibility scheme already in place for the Paging and Radiotelephone Service. Therefore, the Commission should take this opportunity to confirm that Part 22 licensees may continue to use their spectrum for trunked operations – whether it be for an IMTS service or some other type of service.

The Commission Should Allow Private Internal Use Licensees to Use UHF and VHF Equipment that Has Been Certified for Use Under Part 90 of the FCC's Rules.

As more Part 22 spectrum is used to meet the private internal communications needs of licensees in the Paging and Radiotelephone Service, it has become apparent that equipment which has been approved for use under Part 90 should also be automatically approved for use under Part 22 – provided that the equipment is being used by the licensee to meet its private

¹⁶ Brock, Gerald W. *The Second Information Revolution* (Harvard University Press 2009) p. 223. *See also* Reports on Selected Topics in Telecommunications – Final Report to the Department of Housing and Urban Development under Contract No. H-952 (November 1968) p. 120 (This report acknowledged that as of the mid 1960s, the Improved Mobile Telephone Service (IMTS) system was the only current trunked radio system operating in a land-mobile environment).

internal communications needs.¹⁷ The Commission can take official notice that the 35/43 MHz, VHF and UHF Part 22 frequencies are similar in nature to the Part 90 spectrum in those bands. Additionally, the 72-76 MHz control channels are the same and used virtually in the same manner. Because of these similarities, it no longer seems reasonable to limit Part 22 internal use licensees from using equipment that has been approved for use under Part 90 of the Commission's Rules. With the frequency structure being similar and the usage being virtually identical, there is little or no likelihood of interference to other Part 22 operations. And, by allowing Part 22 licensees to utilize Part 90 equipment for internal use communications, the FCC would be allowing licensees to integrate their Part 22 and Part 90 channels into a single operational system which would only require the use of a single mobile unit per user. That said, by allowing the integration of similar Part 22 and Part 90 channels into a single system, licensees will be able to maintain a common equipment stock (and even reuse existing equipment) without having to purchase separate Part 22 and Part 90 equipment – thereby reducing the costs for necessary expansion of private internal communications systems. Accordingly, it is respectfully submitted that the public interest would be served by this change.

*Part 22 Licensees Should be Allowed to Utilize Alternative Real-World
Propagation Studies in Order to Demonstrate Population Coverage under Rule Section 22.503*

In the 1994 re-write of Part 22, the Commission adopted mathematical formulae in Rule Sections 22.537 and 22.567 to replace the old Carey contours.¹⁸ While these mathematical formulae were intended to (a) be relatively simple to use and (b) closely replicate the Carey

¹⁷ Notwithstanding the forgoing, the Commission should consider expanding this request to include any certified equipment that would meet the Part 22 technical requirements for frequency, emission and power.

¹⁸ In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services; Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service; Amendment Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Mobile Service, *Report and Order* 9 FCC Rcd 6513 (1994).

contours, there are circumstances where the contour formulae in Rule Sections 22.537 and 22.567 do not accurately reflect a transmitter's actual propagation characteristics, due primarily to the unique topographical characteristics of the area. As a result, the calculated service and interference contours under Rule Sections 22.537 and 22.567 can understate the transmitter's actual reliable service and interference contours. For this reason, the BloostonLaw Licensees urge the Commission to allow licensees to make an alternative showing that is based upon a real world propagation analysis. In this way, licensees who are actually able to serve areas that are larger than the contours depicted under Rule Sections 22.537 and 22.567 would be able to demonstrate a more accurate population coverage. And, the public interest would be served since the Commission and co-channel licensees would have a more accurate representation of the area served by a particular transmitter; thereby reducing the potential for harmful interference.

*Private Internal Use Facilities Must be
Treated Differently than Facilities Constructed for Commercial Use.*

When the Commission adopted Rule Section 22.503, virtually all of the available paging channels were being used to provide commercial one-way paging, two-way IMTS or fixed BETRS services. It was only in connection with Auction Event Nos. 40 and 48 that private licensees became interested in using this spectrum to meet private internal communications requirements that could not otherwise be satisfied using Part 90 shared spectrum. As a result, the construction coverage requirements and even the substantial service requirements as generally applied by the Commission's staff do not fit how licensees make use of spectrum for private internal use purposes. For this reason, the BloostonLaw Licensees believe that Rule Section 22.503 should be amended to cover two classes of licensees, as follows:

- Commercial Service – Population Coverage/Niche Service/Substantial Service as currently specified in the FCC’s Rules; and
- Private Internal Use – A description of how the system is being used to meet the internal communications needs of the licensee.

For private internal uses, the traditional population coverage model is inappropriate since licensees are not seeking to provide service to others. Rather, internal use communications are communications that are designed to meet the particular needs of the licensee – whether it be a public safety entity, a public utility, a service delivery firm, an automobile emergency service, etc., or whether the communication be voice, data (including low-power data) and/or telemetry. Each of these entities has one thing in common – namely the need for spectrum to meet an internal communications need that could not otherwise be satisfied with spectrum licensed under Part 90 of the Commission’s Rules. In this regard, it is well settled that in deleting the common carriage language from Rule Section 22.7, the Commission intended to expand the scope of eligible Part 22 licensees to include any qualified licensee and not just common carriers. Further, the Commission recognized in the auction context that private internal use of this spectrum was appropriate – especially given the fact that the Commission sought the highest and best use of the spectrum based upon who was willing to pay the most for the particular license. Had the Commission not wanted this spectrum put to use for private internal uses, it (a) would never have routinely granted waivers of Rule Section 20.9(a)(6) and (b) would not have specifically allowed for the licensing of spectrum for private internal use purposes in the auction context. Because population coverage and the FCC’s application of its substantial service rules runs contrary to the reason licensees acquire spectrum for private internal use purposes in the first instance, the public interest would be served by a modification of Rule Section 22.503 to treat private internal use licensees differently from common carrier/CMRS licensees.

Miscellaneous Technical Improvements

The BloostonLaw Licensees urge the Commission to make the following technical changes that would further improve flexibility in the design and operation of radio systems in the Paging and Radiotelephone Service: (a) allow either side of paired spectrum to be used for base and/or mobile operations as well as mobile talk-around; (b) allow flexible subdivision of channels and aggregation of adjacent channels provided that height-power limits are maintained – thereby allowing for flexible designation of center frequencies; (c) allow the use of any permissible emission provided that the emission is compatible with the defined channel and/or aggregated channels; and (d) allow for the use of off-set channels for the provision of low-power data type services.

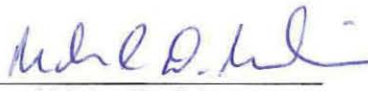
Conclusion

The BloostonLaw Licensees respectfully submit that the changes recommended herein will make the use of the Part 22 Paging and Radiotelephone Service frequencies more flexible to meet future demands for service.

Respectfully submitted,

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Attachment A

AAA North Jersey

American Automobile Association of Northern California, Nevada and Utah
Business Service Center, Inc.

C.W. Wright Construction Co.

Calumet Radio Dispatch

Consolidated Edison Company of New York, Inc.

Golden West Telecommunications Cooperative, Inc.

Honeywell Security

Lubbock Radio Paging Service, Inc. d/b/a Stenocall

Midwest Mobile Radio, Inc.

Mobile Communication Service, Inc.

Mobile Phone of Texas, Inc.

Redi-Call Communications Company

Tyco Integrated Security, Inc.

Vector Security, Inc.